

SUPPORT FOR THE AMENDMENTS

Claim 1 is amended to use wording and structure consistent with U.S. patent law practice. Claim 1 is amended to include the description of Claim 9. Claim 9 is herein canceled.

Claims 3-8, 10-19, 21, 24-25, 27-28, 33-40, 44, 49 and 51-54 are amended to use wording and structure consistent with U.S. patent law practice.

Claim 6 is amended to include the description "Lower Critical Solution Temperature" and indicate LCST as an abbreviation of that term. Support showing that the abbreviation is well-known in the art is attached.

Claims 34 and 37 are amended to more clearly describe the present invention.

Claim 60 is new and is supported on page 18, lines 5-8 in the specification.

No new matter is believed added to this application by entry of this amendment.

Claims 1-8 and 10 to 59 are active. Applicants note that Claims 20, 22-23, 26, 29-32, 41-43, 45-48, 50 and 55-59 have been "withdrawn from consideration at this time."

REMARKS/ARGUMENTS

The claimed invention is directed to a cosmetic composition for the treatment of wrinkled skin. A composition which when topically applied to the skin makes the skin taut and reduces or removes wrinkles and fine lines and which forms a lasting and comfortable film is sought.

The claimed invention addresses this problem by providing a cosmetic composition for topical application to skin which comprises in a medium compatible with the skin: at least one tensioning agent and at least one non-elastomeric, water-insoluble film-forming linear block ethylenic polymer. The at least one linear block ethylenic polymer comprises: a first block consisting of a homopolymer or copolymer, a second block consisting of a homo-

polymer or copolymer and an intermediate block comprising a monomer from the first block and a monomer from the second block. The theoretical glass transition temperature of the first block is different from the theoretical glass transition temperature of the second block, wherein the theoretical glass transition temperature is the  $T_g$  of a homopolymer that would be obtained by polymerization of only that particular monomer. The first block and the second block are mutually incompatible and a polydispersity index,  $I$ , of the at least one linear block ethylenic polymer is greater than 2. The content of the tensioning agent relative to the total weight of the composition is from 0.01% to 20%, and the content of the at least one non-elastomeric, water-insoluble film-forming linear block ethylenic polymer relative to the total weight of the composition is from 0.01% to 20%.

The term “non-elastic polymer” is defined on page 6, lines 1-10, in the specification as follows:

The term “non-elastomeric polymer” means a polymer which, when it is subjected to a constraint intended to stretch it (for example by 30% relative to its initial length), does not return to a length substantially identical to its initial length when the constraint ceases.

More specifically, the term “non-elastomeric polymer” denotes a polymer with an instantaneous recovery  $R_i < 50\%$  and a delayed recovery  $R_{2h} < 70\%$  after having been subjected to a 30% elongation.

No such composition is disclosed or suggested in the cited references.

Applicants note that Claims 20, 22, 23 and 33 have been withdrawn. However, Applicants respectfully submit that these claims do read on the species elected in the Restriction/Election Response submitted December 18, 2008. Applicants wish to thank Examiner Simmons Willis for her time in discussing this issue with Applicants' U.S. representative on August 17, 2009. At that time, Applicants U.S. representative reviewed that the terminology of Claim 20 states that each monomer of the block having a  $T_g$  greater than 40°C would also have a  $T_g$  greater than 40°C if homopolymerized. Claims 22 and 23 which depend from Claim 20 show formulae and describe chemical compounds which read

on the single disclosed elected species of Claim 44. Accordingly, Applicants respectfully request that Claims 20, 22 and 23 be rejoined.

Applicants further wish to thank Examiner Simmons Willis and Supervisory Examiner Woodward for the useful and courteous discussion of this application with Applicants' U.S. representative on August 5, 2009. At that time, Applicants U.S. representative discussed amending Claim 1 to include the description from Claim 9 of specific first, second and intermediate block polymer structure. The Anton reference was reviewed and contrasted to the specific Claim 9 description and Applicants' U.S. representative showed that the cited reference does not disclose or suggest such a block polymer. The following reiterates and expands upon that discussion.

The rejection of Claims 1, 4 and 5 under 35 U.S.C. 102(b) over Anton et al. (U.S. 6,153,206) as evidenced by Chevalier et al. (U.S. 6,156,804) is respectfully traversed.

Anton describes a cosmetic composition, specifically, a lipstick, which comprises an oil component, a particulate matter component and an uncrosslinked synthetic polymer. The polymer comprises a first repeat unit which is a methacrylate ester, which if homopolymerized, would yield a polymer having a glass transition temperature of -10 to 75°C. The polymer also comprises a second methacrylate repeat unit, which if homopolymerized, would yield a polymer having a glass transition temperature of 76 to 120°C.

Anton defines a repeat unit as a monomer unit of the polymer which is present more than one time in the polymer chain. The repeat unit can be present in either repetitive or random sequence with other monomer units (Col. 3, lines 21-24). Example polymer types described include block copolymers, random copolymers, block terpolymer, random terpolymer, graft copolymer, graft terpolymer and random polymer (Col. 4, lines 35-60).

Applicants respectfully submit that nowhere does Anton disclose or suggest a non-elastomeric, water-insoluble film-forming linear block ethylenic polymer, comprising at least a first block consisting of a homopolymer or copolymer, a second block consisting of a homo-polymer or copolymer and an intermediate block comprising a monomer from the first block and a monomer from the second block, as according to the claimed invention.

Chevalier is cited to show microcrystalline wax as a tensioning agent and does not disclose or suggest the non-elastomeric, water-insoluble film-forming linear block ethylenic polymer according to the claimed invention. Therefore, the secondary reference does not cure the deficiency of Anton.

Moreover, Anton is silent relative to the elasticity of the uncrosslinked synthetic polymer. Applicants point to Col. 3, lines 44-49, of the cited reference, which states that monomeric units such as styrene may be present in the final polymer. In contrast, Applicants have indicated that styrene and styrene derivatives are not comprised in the claimed invention.

Applicants respectfully submit that a proper finding of anticipation requires that “[e]very element of the claimed invention ... be literally present, arranged as in the claim. *Perkin-Elmer Corp.*, 732 F.2d at 894, 221 USPQ at 673; *Kalman v. Kimberly-Clark Corp.*, 713 F.2d 760, 771-72, 218 USPQ 781, 789 (Fed. Cir. 1983), *cert. denied*, 465 U.S. 1026 [224 USPQ 520] (1984). The identical invention must be described in as complete detail in the reference as is described in the claimed invention.

In view of the above, Applicants submit that Anton does not disclose or suggest a non-elastic polymer according to the claimed invention and therefore cannot anticipate the claimed invention. Accordingly, withdrawal of the rejection of Claims 1, 4 and 5 under 35 U.S.C. 102(b) over Anton as evidenced by Chevalier is respectfully requested.

The rejection of Claims 1-2, 4-5 and 8 under 35 U.S.C. 103(a) over Anton et al. (U.S. 6,153,206) in view of Chevalier et al. (U.S. 6,156,804) is respectfully traversed.

As indicated above, Anton describes a cosmetic stick composition, such as lipstick. The Anton composition contains a first repeat unit of a methacrylate ester monomer, which, if homopolymerized would yield a polymer having a glass transition temperature of -10 to 75°C. The polymer also comprises a second methacrylate repeat unit, which if homopolymerized, would yield a polymer having a glass transition temperature of 76 to 120°C.

Nowhere does Anton disclose, suggest or provide motivation that would have led one of ordinary skill in the art, at the time of the present invention, to prepare a composition according to the present invention. The primary reference does not disclose or suggest a non-elastomeric, water-insoluble film-forming linear block ethylenic polymer, comprising at least a first block consisting of a homopolymer or copolymer, a second block consisting of a homo-polymer or copolymer and an intermediate block comprising a monomer from the first block and a monomer from the second block. Anton cites U.S. Pat. Nos. 4,588,791 and 4,605,716 as describing the procedure for GTP polymerization of the isobutyl methacrylate/isobornyl methacrylate copolymer employed in Examples 1 and 2. Both cited references describe random polymerization methods and do not disclose or suggest a linear block ethylenic polymer as described in Claim 1.

Moreover, nowhere does Anton disclose or suggest an anti-wrinkle composition such as according to the claimed invention. Chevalier is cited to show microcrystalline wax as a tensioning agent. However, the secondary reference does not disclose or suggest a combination of a tensioning agent with a non-elastomeric, water-insoluble film-forming linear block ethylenic polymer according to the claimed invention, as a comfortable and long lasting anti-wrinkle composition.

Applicants respectfully call the Examiner's attention to the following excerpt from the Office's own discussion of "**Examination Guidelines for Determining Obviousness Under 35 U.S.C. 103 in View of the Supreme Court Decision in *KSR International Co. v. Teleflex Inc.***"

"The rationale to support a conclusion that the claim would have been obvious is that **all the claimed elements were known in the prior art** and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, and the combination would have yielded nothing more than predictable results to one of ordinary skill in the art at the time of the invention. "[I]t can be important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does." **If any of these findings cannot be made, then this rationale cannot be used to support a conclusion that the claim would have been obvious to one of ordinary skill in the art,**" (Federal Register, Vol. 72, No. 195, page 57529) (Citations removed)(Bold added for emphasis)

As described above the combined references do not disclose or suggest a composition comprising a tensioning agent and a non-elastomeric, water-insoluble film-forming linear block ethylenic polymer, comprising at least a first block consisting of a homopolymer or copolymer, a second block consisting of a homo-polymer or copolymer and an intermediate block comprising a monomer from the first block and a monomer from the second block. Therefore, all the claimed elements are not known in the cited references and according to the KSR guidelines above, a conclusion of obviousness cannot be supported. Withdrawal of the rejection of Claims 1-2, 4-5 and 8 under 35 U.S.C. 103(a) over Anton et al. (U.S. 6,153,206) in view of Chevalier et al. (U.S. 6,156,804) is respectfully requested.

The rejection of Claims 3 and 6-7 under 35 U.S.C. 103(a) over Anton in view of Chevalier and further in view of Bazin et al. (U.S. 6,001,367) is respectfully traversed.

Claims 3, 6 and 7 all depend directly or indirectly from Claim 1 and therefore include all the description of the independent claim. The deficiencies of the cited primary

combination of references has been described above. Bazin is cited to show a composition containing a natural polymer as a tensioning agent.

Bazin describes a cosmetic composition containing a soybean protein as a tensioning agent (Profam 972) and an adjuvant such as a gelling agent, an active agent, a preserving agent, an antioxidant, etc. (Claim 1). Nowhere does this secondary reference disclose or suggest the non-elastomeric, water-insoluble film-forming linear block ethylenic polymer according to the claimed invention and therefore, Bazin does not cure the deficiencies of Anton and Chevalier. Accordingly, the cited reference combination cannot render the claimed invention obvious and withdrawal of the rejection of Claims 3 and 6-7 under 35 U.S.C. 103(a) over Anton in view of Chevalier and further in view of Bazin is respectfully requested.

The rejection of Claims 9-17 and 33-35 under 35 U.S.C. 103(a) over Anton in view of Chevalier and further in view of Raether et al. (U.S. 2004/0014872) is respectfully traversed.

Applicants respectfully note that Claim 9 is herein canceled. Claims 10-17 and 33-35 directly or indirectly depend from Claim 1 and include all the description of the independent claim.

Raether describes a binder composition containing a block copolymer and at least 2% by weight of a nonmagnetic and nonmagnetizable solid (Abstract) which is for bonding different substrates or a filler for repairing defects such as defects in automotive bodywork parts[0002]. The binder is self-dispersing in water [0013].

The Office has cited Raether to show a block copolymer composition having a polydispersity less than 5. However, nowhere does this reference disclose or suggest a non-elastomeric, water-insoluble film-forming linear block ethylenic polymer having a first block consisting of a homopolymer or copolymer, a second block consisting of a homo-polymer or copolymer and an intermediate block comprising a monomer from the first block and a

monomer from the second block, wherein the theoretical glass transition temperature of the first block is different from the theoretical glass transition temperature of the second block, as described in Claim 1 of the present invention.

Therefore, Applicants submit that Raether cannot cure the deficiencies of Anton and Chevalier and withdrawal of the rejection of Claims 9-17 and 33-35 under 35 U.S.C. 103(a) over Anton in view of Chevalier and further in view of Raether is respectfully requested.

The rejection of Claims 9, 17-19, 21, 24-25, 27-28, 36-40, 44, 49 and 51-54 under 35 U.S.C. 103(a) over Anton in view of Chevalier and further in view of Kantner as evidenced by Polymer Properties (1999, Aldrich) is respectfully traversed.

The deficiencies of the primary reference combination with respect to anticipating and rendering the claimed invention obvious has been described above. The Office has cited Kantner to show 2-ethylhexyl acrylate and isobornyl acrylate.

Kantner describes a composition containing a copolymer of a (meth)acrylate ester of a C(4-18) alcohol and a (meth)acrylate ester of a C(6-20) cyclic alcohol (Abstract). Nowhere does this reference disclose or suggest a linear block copolymer according to the claimed invention. Applicants note that in each of Examples 1-19 described in this reference, the monomers are all charged to the polymerization reactor and randomly copolymerized. Accordingly, Kantner does not describe any block copolymer and cannot cure the deficiencies of the Anton-Chevalier combination. Polymer Properties is cited to show a  $T_g$  of a 2-ethylhexyl acrylate homopolymer and therefore makes no contribution to relieve the above described deficiency. Accordingly the cited combination of references cannot render the present invention obvious and withdrawal of the rejection of Claims 9, 17-19, 21, 24-25, 27-28, 36-40, 44, 49 and 51-54 under 35 U.S.C. 103(a) over Anton in view of Chevalier and further in view of Kantner as evidenced by Polymer Properties (1999, Aldrich) is respectfully requested.



The rejections of Claims 6, 34-35 and 37 under 35 U.S.C. 112, second paragraph are believed obviated by appropriate amendment. Claim 6 is herein amended to recite Lower Critical Solution Temperature (LCST). Applicant respectfully submit that LCST is a term known to one of ordinary skill in the art as evidenced by the attached articles from Wikipedia and TheFreeDictionary.

Claim 34 is herein amended to more clearly describe the invention and to specify that “comprising one or more silicon atoms” is only in reference to the ethylenically unsaturated monomers.

Claim 37 is amended to more clearly describe that the first block with a Tg of greater than or equal to 40°C is a copolymer derived from monomers which are such that a homopolymer prepared from each copolymer monomer has a glass transition temperature of greater than or equal to 40°C.

In view of all the above, withdrawal of the rejection of Claims 6, 34-35 and 37 U.S.C. 112, second paragraph is respectfully requested.

Applicants submit herewith an English translation of U.S. Provisional Application 60/508,313 and a statement that the translation is accurate. Applicants respectfully request that the claim for benefit of the filing date of U.S. Provisional Application 60/508,313 be granted.

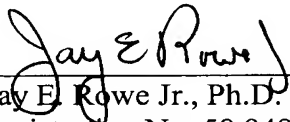
The objection to Claim 34 is obviated by appropriate amendment. The word claim is correctly spelled.

Application No. 10/573,579  
Reply to Office Action of March 18, 2009

Applicants respectfully submit that the above-identified application is now in condition for allowance and early notice of such action is earnestly solicited.

Respectfully submitted,

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